## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION 5:13-cy-162-FDW

ORDER
GABLA

**THIS MATTER** is before the Court on its own motion following the filing of a Motion to Dismiss by Defendants Betty Brown, George Solomon, and Keith Whitener, (Doc. No. 36), on September 8, 2014.

In accordance with <u>Roseboro v. Garrison</u>, 528 F.2d 309 (4th Cir. 1975), the Court advises Plaintiff, who is proceeding pro se, that he has a right to respond to Defendants' motion. The Court also advises Plaintiff that failure to respond may result in Defendants being granted the relief Defendants seek—that is, the dismissal of the Complaint.

## IT IS, THEREFORE, ORDERED that:

\_

<sup>&</sup>lt;sup>1</sup> The Fourth Circuit did not hold in <u>Roseboro</u> that such notice is required for motions to dismiss. Rather, the Fourth Circuit's discussion in <u>Roseboro</u> regarding notice was directed to summary judgment motions. <u>See Roseboro v. Garrison</u>, 528 F.2d 309, 310 (4th Cir. 1975) ("We agree with the plaintiff, however, that there is another side to the coin which requires that the plaintiff be advised of his right to file counter-affidavits or other responsive material and alerted to the fact that his failure to so respond might result in the entry of summary judgment against him."); see also <u>Norman v. Taylor</u>, 25 F.3d 1259, 1261 (4th Cir. 1994) ("In <u>Roseboro v. Garrison</u>, 528 F.2d 309 (4th Cir. 1975), this circuit held that pro se plaintiffs must be advised that their failure to file responsive material when a defendant moves for summary judgment may well result in entry of summary judgment against them."). Nevertheless, courts routinely issue <u>Roseboro</u> notices for motions to dismiss, and the Court does so here.

Plaintiff shall respond to the pending Motion to Dismiss, (Doc. No. 36), within 14
days of service of this Order. Failure to file a timely response will likely lead to
the dismissal of this lawsuit.

Signed: September 9, 2014

Frank D. Whitney

Chief United States District Judge